

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: John F. Rittel

CASE 41U-0090-R-2023

41U 97043-00

41U 97049-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41U 97043-00 was decreed with the following point of diversion and means of diversion:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	15N	6W	LEWIS AND CLARK
Period of Diversion:		JUNE 1 TO SEPTEMBER 30				
Diversion Means:		HEADGATE				

and the following DNRC point of diversion and means of diversion issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE HEADGATE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Claim 41U 97043-00 was also decreed with the following issue remark:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION IN MAXIMUM ACRES IRRIGATED.

3. Claim 41U 97049-00 was decreed with the following issue remark:

ALTHOUGH NOT OBJECTED TO, THE POINT OF DIVERSION AND MEANS OF DIVERSION HAVE BEEN CORRECTED AS REQUESTED BY THE CLAIMANT. THESE MAY BE OBJECTED TO AT THE PRELIMINARY DECREE.

4. No objections were filed.

PRINCIPLE OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

CONCLUSIONS OF LAW

1. The issue remark decreed on claim 41U 97043-00 is not supported by evidence sufficient to overcome the prima facie status afforded to the point of diversion of the claim.

2. The issue remarks decreed on claims 41U 97043-00 and 41U 97049-00 provided notice of changes made after completion of the Temporary Preliminary Decree proceedings and prior to issuance of the Preliminary Decree. As no objections were filed, no further proceedings are required.

RECOMMENDATION

1. The issue remarks should be removed from the claims in this Case with no changes to the elements of the claims.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

John F. Rittel
Black Tail Ranch
4440 South Fork Trail
Wolf Creek, MT 59648

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 97043-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN F RITTEL
BLACK TAIL RANCH
4440 SOUTH FORK TRAIL
WOLF CREEK, MT 59648

Priority Date: JANUARY 1, 1900

Type of Historical Right: USE

Purpose (use): IRRIGATION

***Flow Rate:** 1.38 CFS

***Volume:** 92.00 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 20.00

Source Name: WEST SOUTH FORK DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			1	15N	6W	LEWIS AND CLARK

Period of Diversion: JUNE 1 TO SEPTEMBER 30

Diversion Means: HEADGATE

Period of Use: JUNE 1 TO SEPTEMBER 30

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	20.00			6	15N	5W	LEWIS AND CLARK

Total: 20.00

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 97049-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: JOHN F RITTEL
BLACK TAIL RANCH
4440 SOUTH FORK TRAIL
WOLF CREEK, MT 59648

Priority Date: JUNE 30, 1889

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

THIS RIGHT IS ALSO USED FOR SUBIRRIGATION AND FOR WILDLIFE.

***Flow Rate:** 1.37 CFS

***Volume:** 115.20 AC-FT

Climatic Area: 5 - LOW

***Maximum Acres:** 16.00

***Source Name:** ROBERTS CREEK

Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENWSW	21	16N	5W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO SEPTEMBER 1

Diversion Means: DIVERSION DAM

Period of Use: APRIL 1 TO SEPTEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	2.00		NWSW	21	16N	5W	LEWIS AND CLARK
2	6.50		SESWNW	21	16N	5W	LEWIS AND CLARK
3	7.50		N2SESW	21	16N	5W	LEWIS AND CLARK

Total: 16.00